

REMARKS

Interview Summary

Applicants' representative and the Examiner conducted an interview on October 15, 2007 to discuss the pending claims and cited references. During the interview, Applicants' representative explained the distinctions between the claimed invention and the cited references. The Examiner, in turn, requested more precise citations to the portions of the specification that support the claims. Agreement as to the merits of the rejections was not reached.

Objection to the Specification / 35 U.S.C. § 112 Rejection

The specification is objected to as allegedly failing to provide proper antecedent basis for the claimed subject matter. Specifically, the Examiner asserts that the specification fails to provide proper antecedent basis for the phrase "the computer code *is determined to be executable only* when the computer code is time stamped..." as recited in claim 8. Additionally, claim 8 is rejected under § 112, first paragraph, because the claim allegedly contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. Applicants respectfully traverse the objection and rejection.

Claim 1, as originally filed in the application, recited a series of steps concluded by:

determining the executability of the computer content in response to the result of the comparing step.

Claim 8, as originally filed, recited "wherein the *computer content is executed* only when the computer content is..." In the response filed July 25, 2007, claim 8 was amended to recite "the computer code is *determined to be executable...*" (emphasis added to all claims to emphasize

claim language under discussion). Thus, claim 8 was amended merely to conform it with the originally-filed claim 1.

The claims as filed in the original specification are part of the disclosure. *In re Benno*, 768 F.2d 1340 (Fed. Cir. 1985). The original language of claim 1 therefore provides antecedent basis for amended claim 8 and shows that the subject matter of claim 8 was described in the specification in a way that demonstrates that the inventors had possession of the claimed invention. Moreover, there is ample support in the specification for claim 8. For example, paragraph 75 states that “access control module 203 applies alert time 204 to determine the executability of the computer code.” FIG. 4 likewise illustrates steps associated with determining the executability of the computer code. For at least these reasons, Applicants respectfully traverse the objection to and rejection of claim 8.

Claim Rejections under 35 U.S.C. § 103

Claims 1-10, 12-17, and 20-33 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bates et al., U.S. Patent 6,721,721 in view of Hericourt et al., U.S. Patent 7,099,916. Claim 11 stands rejected as being unpatentable over the combination of Bates and Hericourt in view of Symantec, “Norton AntiVirus Corporate Edition.” Applicants respectfully traverse these rejections as applied to the amended claims.

The claimed invention uses a virus outbreak report indicating a virus attack to compute a computer virus alert time. The computer virus alert time is compared with a time stamp corresponding to an earliest moment computer code was allowed to execute on a computer coupled to a computer network, and the executability of the computer code is determined in

response to the comparison. Specifically, the independent claims recite limitations corresponding to:

entering a first computer virus status mode in response to a first computer virus outbreak report indicating a virus attack threat to a computer network;
computing a first computer virus alert time corresponding to entry into the first computer virus status mode;
comparing a time stamp of executable computer code corresponding to an earliest moment the computer code was allowed to execute on a computer coupled to the computer network with the first computer virus alert time; and
determining the executability of the computer code in response to the result of the comparing step.

(quoting from claim 1). Dependent claim 8 further recites that the “computer code is determined to be executable only when the computer code is time stamped prior to the first computer virus alert time.” In other words, the computer code is executable because it has existed since before the virus alert and, therefore, is unlikely to be infected by that virus.

Support for the amended claims is found throughout the specification and figures. FIG. 1 illustrates a computer network having coupled computers. Paragraph 38 states that the “time stamp of an executable computer code corresponds to an earliest moment this particular computer code was allowed to execute by computers 2,3 on the network.” Further, paragraph 50 states that “memory table 205 stores hash values of computer codes that have been executed and a time entry recording the time of inserting the hash value into memory table 205.” Paragraph 75 describes how the access control module 203 assumes that computer code requesting execution has never been allowed to execute if the code’s hash value is not found in the memory table.

The cited references, at the least, fail to disclose “comparing a time stamp...corresponding to an earliest moment the computer code was allowed to execute on a

computer coupled to the computer network.” Bates discloses a system that integrates virus checking functionality into a computer database search environment, thereby allegedly decreasing the risks of viruses associated with accessing search results from computer database searches. See Bates, Abstract; column 3, lines 1-3.

The Examiner asserts that Bates “discloses that a time stamp of the executable code corresponds, inter alia, to the time the code was virus scanned” but does not explicitly disclose that the time stamp corresponds to an execution time of the computer code. The Examiner addresses this lack of disclosure by citing to Hericourt, which allegedly discloses that virus scanning of executable code can comprises an execution of the code. Therefore, the Examiner alleges, it would have been obvious to one of ordinary skill in the art to recognize the teachings of Hericourt within the system of Bates.

Neither Bates nor Hericourt discloses or suggests using a time stamp that corresponds to an earliest moment the computer code was allowed to execute on a computer coupled to a computer network. Thus, even if Bates discloses a time stamp indicating when code was virus scanned, and the scanning comprised an execution as allegedly taught by Hericourt, there is no teaching or suggestion that the time stamp corresponds to an earliest time that the code was scanned or executed. Both references assume that code is scanned multiple times, and neither reference attaches any special significance to an earliest time that the code was scanned (or executed). Rather, the time stamp in the references might well be the latest time the code was scanned or executed.

The Symantec reference fails to remedy the deficiencies of Bates and Hericourt described above. Therefore, a person of ordinary skill in the art, considering the teachings of the references either alone or in combination would not find the claimed invention obvious.

In the “Responses to Arguments” section of the October 3, 2007 Office Action, the Examiner did not directly address the arguments raised above. Instead, the Examiner stated that the claims recited “*an* earliest moment the computer code was allowed to execute” while Applicants’ Remarks used the language “*the* earliest moment...” Therefore, the Examiner asserted that the argued language was not present in the amended claims.

In response, Applicants have revised the above Remarks to use “an” instead of “the,” thereby conforming the claims with the Remarks and addressing the Examiner’s concerns. In addition, Applicants have added additional language to the claims that clarifies that the execution under consideration occurs on a computer coupled to the computer network. Applicants respectfully submit that the features upon which Applicants rely in the Remarks are found in the amended claims.

Accordingly, Applicants respectfully submit that the pending claims are allowable over the cited references and request allowance of the claims. If the Examiner believes that direct contact with the Applicants’ attorney will advance the prosecution of this case, the Examiner is encouraged to contact the undersigned as indicated below.

Respectfully submitted,
CAREY S. NACHENBERG, ET AL.

Dated: October 23, 2007

By: /Brian Hoffman/
Brian M. Hoffman, Reg. No. 39,713
Attorney for Applicants
Fenwick & West LLP
801 California Street
Mountain View, CA 94041
Tel.: (415) 875-2484
Fax: (415) 281-1350